XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CF0000061354

(2)

Cr.A 2049/97

APPEAL OF PRISONER

Division Bench (Criminal)

No. 5294 Name भदवा

Father's name दुखली निवासी ग्राम - मनौरा, थाना - बलरामपुर

Residence जिला - सरगुजा (म.प्र.) Age 45 वर्ष

Sentenced to आजीवन कारावास 7 वर्ष सश्रम On 31-5-97 19/5/97

Under section 302, 201, 34 IPC by माननीय जिला एवं सत्र न्यायाधीश अम्बिकापुर सरगुजा (म.प्र.)

ST. NO - 384/95

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

High Court of Madhya Pradesh
JABALPUR
Received on 15 SEP 1997
Registration No. 637

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent .....

4 Whether the prisoner wishes to be represented or not – Yes / No

No. 5294 Name भदवा S/o दुखली

Confined in केन्द्रीय Jail रायपुर (म.प्र.)

No. 307/विधि/97 Dated 2/9/1997

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ माननीय अतिरिक्त पंजीयक महोदय माननीय उच्च न्यायालय म.प्र. जबलपुर।
togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न :- ST. NO - 384/95 की सत्यापित निर्णय प्रतिलिपी।

Superintendent
Central Jail Raipur. (M.P.)

Date of order 19/5/97

Date of receipt in ..... office May - 12

Date of receipt record to accompany the ..... June - 30

Memo of Appeal to the Appellate court ..... June - 31

No ..... Dated ..... 199 ..... Aug - 31

Forwarded to the ..... 347 - 2

10.6.60

Date of receipt in Appellate Court .....

(P. T. O.)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.2049/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH, BILASPUR

DIVISION BENCH HON. SHRI L.C. BHADOO AND
HON. SHRI DHIRENDRA MISHRA, JJ

Criminal Appeal No. 2049 of 1997

Appellant : Bhadva

Versus

Respondent : State of M.P.

Present
Mr. M.P.S. Bhatia, learned counsel for the appellant.
Mr. U.K.S. Chandel, learned P.L. for the State/respondent.

ORAL JUDGMENT
(20.12.2006)

Per L.C. Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentence dated 31.5.1997 passed by Sessions Judge, Ambikapur, in S.T. No. 384/95 whereby the learned Sessions Judge after holding accused Bhadva guilty for commission of the offence under Sections 302, 201 of the I.P.C., sentenced him to undergo imprisonment for life and rigorous imprisonment for seven years

P.T.O.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.:.20.49.1.99 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

respectively. Both the sentences were directed to run concurrently. However, co-accused Sudhan was acquitted of the charge under Sections 302/34 and 201 of the IPC.

2. Case of the prosecution, in brief, is that PW-1 Hariprasad lodged the First Information Report (Ex.P/1) in the Police Station – Balrampur on 3rd July 1995 to the effect that when he was sowing paddy in his field at about 10.00 a.m. Libna Uraon and Beeru Uraon came to his field and informed that his daughter Guliya Uraon is missing for the last 15 days. They have come to know that one dead body after tying the same with wooden plank with the help of rope, has been thrown into the water tank of Gosain Uraon. Then he along with those persons went to the tank of Gosain Uraon and saw that the dead body tied with wooden plank with the help of rope, was floating on the water. It seemed as if somebody after committing murder, has thrown the dead body into the water. Receiving this report S.H.O., P.S. Balrampur left for the scene of occurrence where he found that the dead body was floating on the water. After giving notice (Ex.P/3) to the Panchas, inquest report (Ex.P/4) of the dead body of Guliya Bai

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XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.2049/97 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश – 3 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was prepared. While in police custody accused Bhadva gave memorandum (Ex.P/5) regarding the place where dead body of Guliya Bai along with her clothes were earlier buried and after exhuming the dead body from that place, it was thrown in the water tank whereas the pieces of her clothes were buried in the same pit. In pursuance of that, weapon of offence i.e. iron pickaxe stained with blood was taken into possession under Ex.P/6. On his memorandum (Ex.P/7) one bamboo stick, one nylon rope, wooden plank, mat were taken into possession under Ex.P/8. Plain and bloodstained soil from the place of occurrence was taken into possession under Ex.P/10. Clothes of the deceased found on her body were taken into possession under Ex.P/12. Dead body of Guliya Bai was sent for postmortem examination to Primary Health Centre, Balrampur where Dr. S.P. Vaishya (PW-6) conducted postmortem and prepared the postmortem report (Ex.P/13). He opined that cause of death was due to coma as a result of blow by hard and blunt object on the temporal region of skull. Adipocere was present and death was homicidal in nature. Clothes which were exhumed at the instance of the accused as well as the clothes which were found on the dead body of deceased were

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A-2049/97 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

sent to Forensic Science Laboratory in order to ascertain whether both the clothes are the pieces of the same Sari, Petticoat and Blouse, from where report Ex.P/22 was received. After completion of investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Ramanujganj who in turn committed the case to the Sessions Judge, Ambikapur where prosecution in order to establish the charge against the accused persons examined nine witnesses. Statements of the accused was recorded under Sections 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution evidence and stated that they are innocent and have been falsely implicated in the crime.

3. Learned Sessions Judge after hearing counsel for the respective parties convicted and sentenced the accused as aforementioned.

4. We have heard Mr. M.P.S. Bhatia, learned counsel appearing on behalf of the accused/appellant and Mr. U.K.S. Chandel, learned P.L. for the State/respondent.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...Cr.A.2049/17... ~~सन् 200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 5 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

5. Mr. Bhatia has not disputed the homicidal death of Guliya Bai. Apart from that, PW-6 Dr. S P. Vaishya who conducted postmortem on the body of Guliya Bai has stated that there were contusions on the thigh, chest and mandible, bone was fractured, zygometic bone was fractured, there was a depressed fracture on the skull bone, cause of death was coma, injuries were caused by hard and blunt object and death was homicidal in nature. His injury report is Ex.P/13. This witness has not been cross-examined by the defence, therefore, from the above medical evidence it is established that death of Guliya Bai was homicidal in nature.

6. As far as involvement of the accused Bhadva in crime in question is concerned, there is no ocular or direct evidence against the accused in this case. The conviction is based on circumstantial evidence i.e. the pieces of clothes of deceased Guliya Bai were recovered at the instance of accused Bhadva from the place where firstly the dead body was buried after commission of murder.

7. As per settled law in order to rest conviction based on the circumstantial evidence, as per the decision of the Apex Court in the

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...Cr.A.:2049/97 **सन् ~~200~~**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 6 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

matter of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220,** the circumstantial evidence must satisfy the following tests:

a. the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

b. those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

c. the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

d. the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 2049/19 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

8. Mr. Bhatia submitted that as per the F.S.L. report (Ex.P/22) the contour of the clothes which were exhumed at the instance of the accused and the clothes which were seized from the body of deceased, did not match as the contour was damaged. He further argued that recovery at the instance of accused is a very weak type of evidence, therefore, merely on this circumstance the accused cannot be connected with the crime in question. He further contended that the prosecution has not been able to establish that there was any motive on the part of accused Bhadva to commit the murder of Guliya Bai.

9. As far as motive to commit the murder of Guliya Bai is concerned, when the case is based on circumstantial evidence if motive is established, it plays a vital rile in connecting the accused with the crime in question. But at the same time, if it is missing it is very difficult to ascertain as to what was the motive of the accused prevailing in his mind at the time of commission of the crime. It is only known to the accused and not the third person. Therefore, the Court is required to scrutinize the circumstantial evidence in a careful

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A..2049/97 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

manner before arriving at the conclusion that prosecution has been able to establish the involvement of the accused in crime in question on the basis of above principles laid down by the Apex Court.

10. The investigating officer PW-8 Anandram has stated that on 3.7.1995 in the presence of witnesses during investigation accused Bhadva while in police custody made a disclosure that dead body of Guliya Bai was buried in the field near his house and thereafter he along with his brother Sudhan after exhuming the dead body, wrapped it with mat, tied with wooden plank and threw the same into the water tank of Malai Uraon. The accused also disclosed that the pieces of Blouse and Sari of Guliya Bai were again buried in the same pit from where the dead body was exhumed and his memorandum is Ex.P/5 which bears his signature from 'B' to 'B' portion. He further stated that the accused took them near the pit from where pieces of Blouse and Sari were taken out by the accused and handed over to them which were seized under Ex.P/9. PW-1 Hariprasad has corroborated the above evidence and has stated that the accused Bhadva gave memorandum Ex.P/5 which bears his signature and accused handed

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मामला क्रमांक Cr.A.:2049/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

over the pieces of clothes to the police after taking out the same from the pit, which were taken into possession under Ex.P/9. The defence has not been able to elicit any circumstance in the cross-examination of these witnesses to show that the above memorandum was not given by the accused and in pursuance of that the recovery was not effected. Therefore, it is established that memorandum Ex.P/5 was given by the accused, in pursuance of which clothes of the deceased were recovered.

PW-8 Anandram has again stated that the recovered pieces were sent to F.S.L., Sagar for examination. The report of F.S.L. is admissible under Section 293 of the Cr.P.C. Perusal of the report (Ex.P/22) reveals that the piece of Sari recovered from the pit marked as 'H-1' and piece of Sari 'I-2' recovered at the instance of accused tallied with each other in design, in warp and woof and on microscopic examination both the pieces tallied with each other. Even on burning of both the pieces, it turned into grey colored ash.'H-3' and 'I-1' i.e. pieces of Blouse of the deceased, which was taken from the body of deceased and the piece of clothe recovered at the instance of the accused from the pit, also tallied with each other on the above tests.

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मामला क्रमांक Cr.A. 2049/97 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —/0—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The laboratory could not conduct test in respect of contour because the contour was damaged. Final opinion was given that yellow coloured pieces of clothes of Ex. I-2 tallied with the yellow coloured pieces of Sari of Ex. H-1 and the pieces of clothes of Ex.I-1 tallied with the piece of Blouse of Ex.H-3. Therefore, prosecution has been able to establish the fact based on this report that Sari and Blouse recovered at the instance of accused Bhadva from the pit tallied with the pieces of Sari and Blouse seized from the body of deceased. It is an admitted fact that the place from where the clothes of the deceased were taken into possession, was shown by the accused, as such it is established that the accused had the knowledge about the place where the dead body of Guliya Bai was buried and the clothes and other things were concealed. This is a strong circumstance unerringly pointing towards the guilt of the accused and there is nothing on record to show that the accused Bhadva has been implicated in a false crime.

11. On the basis of aforesaid discussion, we're of the considered opinion that finding of the trial Court convicting the accused Bhadva

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...Cr.A.:2049/97... **सन् ~~200~~**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -11-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

under Sections 302 and 201 of the IPC, is based on strong circumstantial evidence and the same does not suffer from any illegality or infirmity.

12. In the result, the appeal being devoid of substance is liable to be dismissed and is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

P.T.O.